

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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CASE NO. A-6515

PETITION OF LOUIS J. MORSBERGER

OPINION OF THE BOARD

(Opinion Adopted March 29, 2017)
(Effective Date of Opinion: April 6, 2017)

Case No. A-6515 is an application for a variance of 2.20 feet from the seven-foot side lot line setback required by Section 59-4.4.9.B.2 of the Zoning Ordinance. The Petitioner seeks to locate an existing air conditioning condenser within 4.80 feet of the side lot line.

The Board of Appeals held a hearing on the application on March 29, 2017. Petitioner Louis J. Morsberger appeared and testified at the hearing pro se.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot P1, Block 9, Chevy Chase Section 1A Subdivision, located at 5610 Cedar Parkway, Chevy Chase, Maryland, 20815, in the R-60 Zone.
2. The subject property is 5,158 square feet in size, much smaller than the "typical lot size in the neighborhood of 7500 sq. ft." The subject property "is the smallest in the neighborhood," although the adjacent lot from which it was subdivided is similar in size at 5,170 square feet. The subject property has a curved front lot line and a sloped front yard, giving it an unusual shape and further constraining the buildable area of the property. Finally, the subject property "also suffers from a utility right of way and heavily cabled utility pole on the rear corner of the back yard, with wires to the neighbors passing over the back yard..." See Exhibits 3, 4(d) and 5(c). The Petitioner has owned this property since 2001, and did not create these conditions. See Exhibit 3.

3. The Petitioner indicates in his Justification Statement that “[a] visual survey of the neighborhood indicates that historical development patterns include placement of condensers in side yards rather than back.” In addition to recounting the side yard locations of some condensers that could be viewed from the street, the Petitioner provides an “aerial survey using Google Earth [which] further reinforces that condensers in the neighborhood are consistently placed in the side yards.” See Exhibits 3 and 7(e).
4. The Petitioner indicates in his Justification Statement that he is seeking to locate a second air conditioning condenser in the same side yard where “one of the prior owners ... placed the first condenser....” He notes that his rear yard is approximately 1,253 square feet, and that adding the condenser “to this small a back yard inevitably intrudes on any backyard activity, whether recreation, entertaining, or relaxation. This imposition seems especially unwarranted given that a first condenser already exists and is allowed in the side yard, and the second condenser only encroaches an incremental .1’ into the current setback.” His Justification Statement goes on to set forth in greater detail the hardship that locating the condenser in various parts of the rear yard would cause. See Exhibit 3.
5. Per the Justification Statement, “[p]lacing the 2nd condenser in the side yard in line with the first, ensures that it will be obscured by the existing fence and less visible to both the neighbor to the rear (west) and the neighbor on that side of the house (north). Because the house to the rear overlooks the subject back yard, were the variance denied and the condenser placed in the back yard, it would detract from that neighbor’s current view. The house to the side is bounded by that neighbor’s driveway, so the existing fence and the driveway serve to protect that neighbor from a view of the condenser and from undue noise.” See Exhibits 3, 5(a) and 5(b).
6. The record contains a letter of support from the Petitioner’s abutting neighbors to the north (side), who would be most affect by the placement of this condenser if the variance were granted, as well as a letter of support from his abutting neighbors to the west (rear), who not only voice their support for the grant of the variance, but also state that their property would be negatively impacted if the variance were not granted. See Exhibits 9 and 10.
7. At the hearing, Mr. Morsberger testified that the condenser is existing, and that it was installed based on a building permit that had been granted in late 2015 or early 2016. He testified that in connection with the renovations allowed by that permit, a decision was made not to build out to the rear, causing a shift in the placement of an egress window and a resultant adjustment to the placement of the new condenser.

Mr. Morsberger then testified about the uniqueness of his property, noting that his lot is substandard for the R-60 zone, small for a lot in Chevy Chase Village (where

the average size is 7,500 square feet), and the smallest lot in the immediate vicinity. He directed the Board's attention to the Zoning Vicinity Map to illustrate this point. Mr. Morsberger further testified that his lot has a unique shape with curved frontage rendering a part of his front yard unusable from a practical standpoint. He testified that his front yard is further encumbered by a steep slope, and that his rear yard must have a County or utility right-of-way, because it contains a large utility pole and wires, visible from his rear window. Finally, Mr. Morsberger testified that air conditioning condenser units are traditionally placed in the side yards of houses in his neighborhood, as indicated in his written submission.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1(a). 7.3.2.E.2.a.i. ...exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

Based upon Mr. Morsberger's testimony and written Justification Statement, the Board finds that the subject property is the smallest in the neighborhood and substandard for the R-60 zone. Indeed, the Board finds, in reviewing the Zoning Vicinity Map, that the subject property, and the adjacent property from which it was subdivided, are not only significantly smaller but also significantly shallower than all of the other properties on the surrounding block. See Exhibit 7(a). The Board finds that the small size of this property, coupled with its shallow depth, results in this property having an unusually small rear yard, and that the use of this yard is further constrained by the presence of a utility pole and cables. In addition, the Board finds that the front of the subject property has a curved front lot line, giving it an irregular shape, and is encumbered by a steep slope. See Exhibits 3, 4(d) and 5(c).

1(b). 7.3.2.E.2.a.v. ...the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the representations of the Petitioner at the hearing and in his Justification Statement, and as evidenced by the Google Earth aerial photograph in the record at Exhibit 7(e), that in this neighborhood, air conditioning condensers are typically located in the side yard. The Board further finds that the original condenser for the subject property was located in the side yard. Thus the Board finds that the proposed location of a second condenser in that same area substantially conforms not only to the established historic or traditional development pattern of this street or neighborhood, but also of this lot.

2. 7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;

The Petitioner did not create the unusually small and constrained size of the subject property, nor did he locate the original condenser in the side yard, or the

condensers of surrounding properties in their side yards. Thus the Board finds that the special circumstances or conditions are not the result of actions by the applicant.

3. *7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variance, to allow a second air conditioning condenser on the same side of the house as the first, encroaching an additional one-tenth of a foot beyond the encroachment of the first condenser into the side lot line setback, is the minimum necessary to comport with the historic or traditional development pattern in this neighborhood, and to overcome the unique constraints of this lot, and thus is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary conditions on the subject property.

4. *7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that permitting this second condenser on the side of this home continues the residential use of the property and is entirely consistent with the applicable master plan.

5. *7.3.2.E.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

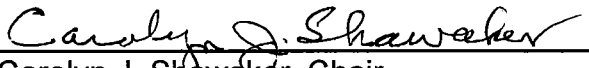
The Board finds that permitting this condenser to remain on the same side of the home where the original condenser is located will not be adverse to the use and enjoyment of abutting or confronting properties. The Board notes that the unit will be separated from the adjoining home to the north by a solid fence and a driveway. See Exhibits 5(a) and 5(b). The Board further notes that per the Zoning Vicinity Map, the house on that abutting property to the north is set at an angle to the house on the subject property, facing a different street, and is set back a considerable distance from the shared property line, and that the record contains a letter of support from the owners of that property. See Exhibits 7(a) and 9. Finally, the Board notes that Petitioner's Justification Statement cites harm to the adjoining neighbor behind if the condenser were to be located in the rear yard, and that the record contains a letter from those neighbors in which they confirm the harm that would be done if the condenser were located in the rear yard, and in which they indicate their support for the grant of the variance. See Exhibit 10.

Accordingly, the requested variance of 2.20 feet from the seven-foot side setback required by Section 59-4.4.9.B.2 of the Zoning Ordinance, to permit to permit an air conditioning condenser unit to remain in its current location, within 4.80 feet of the side lot line, is granted subject to the following condition:

1. The Petitioner shall be bound by all of the testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of April, 2017.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.